

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION.NO.891 OF 2007

Sanjay Gopal Naik

...Petitioner

V/s.

The Municipal Corporation of Greater
Mumbai,& Anr.

...Respondents

Mr.P.S. Dani with Ms.J.P. Thakkar for Petitioner.
Ms.Archana Joshi for BMC(Respondents).

CORAM : V.M. KANADE, J.

DATED : 23rd APRIL, 2007.

P.C.:

1. Heard learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of Respondents.

2. Grievance of the Petitioner is that the Respondent-BMC is not issuing Eating House Licence for the purpose of carrying on business of a Restaurant. It is the case of the Petitioner that he has acquired the tenancy rights in respect of the premises where he intends to start the Eating House as a Restaurant. Before the Petitioner acquired the premises in December, 2003, the premises

in question was used for commercial purpose since 1955. It is the case of the Petitioner that he has carried out tenantable repairs after acquiring tenancy rights sometimes in March-April, 2004. It is the case of the Petitioner that no permission of BMC is required for carrying out tenantable repairs. However, stop-work notice was issued by the Respondents U/s.354-A of the M.M.C Act. He submits that he will produce requisite documents and try to satisfy authorities, though no permission is required for carrying out the tenantable repairs. However, Respondents issued notice dated 19/05/2004, threatening the Petitioner that the premises would be demolished. He, therefore, filed suit in the City Civil Court being L.C. Suit No.2507/04, challenging the said notice U/s.354-A of the said Act. City Civil Court was pleased to pass an order of status-quo and stayed the demolition.

3. In the meantime, the Petitioner preferred an application for grant of Eating House Licence of the said premises. He submitted that though all the terms and conditions have been complied with by the petitioner, the Respondents are refusing to issue licence only on the ground of pendency of the suit in the City

Civil Court which is filed by the Petitioner. The Petitioner had approached this court earlier and this court by its order dated 2nd May 2005 had directed the Respondents to decide the application of the Petitioner on merits and in accordance with law. According to the Petitioner, though this direction was given by this Court, the Respondents are still insisting that the Petitioner should first withdraw the suit which is filed by him in the City Civil Court and thereafter licence will be issued. This is denied by the learned counsel for the BMC. She submits that the Authority had directed the Petitioner to execute an indemnity bond so that in the event Petitioner's suit is dismissed, necessary steps can be taken against him in accordance with law.

4. Learned counsel for the Petitioner submits that he is willing to give indemnity bond to that effect. Learned counsel for the Respondents-BMC submits that apart from furnishing indemnity bond, he has to comply with terms of Public Health Department and also obtain N.O.C. from the Fire Brigade Department and comply with the other conditions which are mentioned in the order dated 29th August, 2006. Learned counsel

for the Petitioner submits that he is willing to give indemnity bond also comply with conditions which are mentioned in the order dated 29th August, 2006.

5. In the circumstances, in my view, it would be appropriate to direct the Respondents to issue licence on the Petitioner furnishing indemnity bond as stated in the letter dated 29th August, 2006 and on his complying with other conditions which are mentioned in the said letter. It is made clear that licence which is issued by the Respondents shall be a temporary licence and shall be subject to the final decision which may be taken by the City Civil Court in the suit which is filed by the Petitioner. The Writ Petition with these directions is disposed of. The Respondents are directed to issue licence within a period of two weeks after conditions are complied with by the Petitioner.

V.M. KANADE, J.

